

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROKKO M.,

Plaintiff,

Y.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

CASE NO. 2:22-CV-29-DWC

ORDER AFFIRMING DEFENDANT'S DECISION TO DENY BENEFITS

Plaintiff filed this action, pursuant to 42 U.S.C. § 405(g), for judicial review of Defendant’s denial of Plaintiff’s applications for disability insurance benefits (“DIB”) and supplemental security income (“SSI”). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73 and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. *See* Dkt. 4.

After considering the record, the Court concludes that the summary provided by Dr. Hirdes is not a medical opinion and the Administrative Law Judge (“ALJ”) was not required to evaluate it using the factors provided by the new regulations. Accordingly, the Court affirms the ALJ’s decision in finding Plaintiff not disabled.

FACTUAL AND PROCEDURAL HISTORY

2 On March 12, 2020, Plaintiff protectively filed for DIB, and on October 1, 2020, filed for
3 SSI, alleging a disability onset date of February 28, 2017 in both applications. *See* Dkt. 12;
4 Administrative Record (“AR”) 22, 64-65, 70-71. The applications were denied upon initial
5 review and on reconsideration. AR 22, 68, 74.

6 ALJ Angelita Hamilton held a hearing on March 29, 2021 and issued a decision on May
7 28, 2021, finding Plaintiff not disabled AR 19-35, 42-61. The Appeals Council denied Plaintiff's
8 request to review the ALJ's decision, making the ALJ's decision the final decision of the
9 Commissioner. *See* AR 8-12; 20 C.F.R. §§ 404.981, 416.1481.

10 In Plaintiff's Opening Brief, Plaintiff contends the ALJ did not properly evaluate the
11 supportability and consistency of Dr. Steven C. Hirdes's medical opinion.

STANDARD OF REVIEW

13 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of
14 social security benefits if the ALJ's findings are based on legal error or not supported by
15 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th
16 Cir. 2005) (citing *Tidwell v. Apfel*, 161 F.3d 599, 601 (9th Cir. 1999)).

DISCUSSION

Whether the ALJ Properly Evaluated the Medical Opinion

19 Plaintiff contends the ALJ erred by failing to evaluate the supportability and consistency
20 of Dr. Hirdes's medical opinion. Dkt. 12, pp. 4–13.

21 On August 27, 2019, Dr. Hirdes provided a summary of his findings after conducting a
22 psychological evaluation of Plaintiff on July 25, 2019. AR 317-19. In the first paragraph, Dr.
23 Hirdes wrote, "The purpose of this brief summary is to assist the client with a basic

1 understanding of the psychological findings, along with the identified diagnostic considerations
 2 and treatment recommendations.” AR 317. Dr. Hirdes then included comments about Plaintiff’s
 3 intellectual functioning, anxiety, emotional distress, ability to make decisions, depression, and
 4 ability to form relationships. AR 317-18. Dr. Hirdes also included that Plaintiff was diagnosed
 5 with autism spectrum disorder, Level 1, unspecified anxiety disorder, and major depressive
 6 disorder. AR 318. Finally, Dr. Hirdes offered “recommendations,” stating that providing Plaintiff
 7 with accommodations would “allow her to work at a more slowed pace and deliberate pace,” and
 8 that Plaintiff “should work not more than on a part-time basis.” *See* AR 319. Dr. Hirdes further
 9 recommended that based on Plaintiff’s psychological symptoms, “she should consider making
 10 application for Social Security Disability Services.” *See id.*

11 The ALJ found Dr. Hirdes’s summary “unpersuasive,” but provided no further
 12 explanation as to why because the ALJ considered it “evidence that is inherently neither valuable
 13 nor persuasive” under 20 C.F.R. § 416.920b(c). *See* AR 28.

14 Plaintiff filed her applications after March 27, 2017. AR 22, 64, 70. Under the applicable
 15 rules, the ALJ must “articulate how [she] considered the medical opinions” and “how persuasive
 16 [she] find[s] all of the medical opinions” by considering their supportability, consistency,
 17 relationship with the claimant, specialization, and other factors. 20 C.F.R. §§ 404.152c(c),
 18 416.920c(c). The ALJ is specifically required to consider the two most important
 19 factors, supportability and consistency. 20 C.F.R. §§ 404.1520c(a), 416.920c(a).

20 The supportability factor requires the ALJ to consider the relevance of the objective medical
 21 evidence and the supporting explanations presented by the medical source to justify their
 22 opinion. 20 C.F.R. §§ 404.1520c(c)(1), 416.920c(c)(1). The consistency factor involves
 23 consideration of how consistent a medical opinion is with the other record evidence. 20 C.F.R.
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1 §§ 404.1520c(c)(2), 416.920c(c)(2). Under the new regulations, “an ALJ cannot reject an
 2 examining or treating doctor’s opinion as unsupported or inconsistent without providing an
 3 explanation supported by substantial evidence.” *Woods*, 32 F.4th at 792. On the other hand, an
 4 ALJ need not provide analysis if the evidence is “neither valuable nor persuasive to the issue,”
 5 such as decisions by other governmental agencies and nongovernmental entities,” and
 6 “statements on issues reserved to the Commissioner.” *See* 20 C.F.R. § 416.920b(c)(1)-(2).

7 Plaintiff argues the ALJ erred because the ALJ rejected Dr. Hirdes’s opinion without
 8 considering its supportability and consistency. Dkt. 12, p. 9. In contrast, Defendant argues that
 9 what Dr. Hirdes provided was not a medical opinion, but rather statements on issues reserved to
 10 the Commissioner. *See* Dkt. 14, p. 2. Thus, according to Defendant, the ALJ did not need to
 11 discuss it and its persuasiveness. *See id.* The Court agrees.

12 Under the regulations, a “medical opinion” is a “statement from a medical source about
 13 what [a claimant] can still do despite [the claimant’s] impairment(s) and whether [the claimant
 14 has] one or more impairment-related limitations or restrictions” in the claimant’s ability to
 15 perform the physical, mental, and other demands of work activities, and adapt to environmental
 16 conditions. *See* 20 C.F.R. § 404.1513(2)(i)-(iv).

17 Here, Dr. Hirdes’s summary consists mostly of Plaintiff’s results from psychological
 18 assessments and Dr. Hirdes’s impressions of her impairments. *See* AR 317-19. While Dr. Hirdes
 19 did provide some comments about Plaintiff’s employability, the comments were limited and
 20 lacked any functional limitations that speak to Plaintiff’s ability to perform work activities
 21 despite her impairments. For example, Dr. Hirdes commented on Plaintiff’s interest in screen
 22 printing, calling it a “reasonable type of employment” as it has “few demands of social
 23 interaction,” and wrote about “concerns about her ability to manage requirements and obligations

1 of timeliness and efficiency.” *See* AR 819. But besides these general statements, ALJ provided
 2 no details about her functional limitations, such as how Plaintiff can meet “mental demands of
 3 work activities.” *See* 20 C.F.R. § 404.1513(a)(2)(ii).

4 Dr. Hirdes also stated that “pronounced levels of accommodations” would allow Plaintiff
 5 to work, that “[s]he should work not more than on a part-time basis,” and recommended that she
 6 consider applying for Social Security benefits. AR 318. But statements regarding how a claimant
 7 is or is not “disabled, blind, able to work, or able to perform regular or continuing work” are
 8 statements on issues reserved to the Commissioner, not medical opinions. *See* AR 318-19; 20
 9 C.F.R. § 416.920b(c)(3)(i).

10 Plaintiff argues that Dr. Hirdes’s statement limiting Plaintiff to part-time work is not a
 11 statement reserved to the Commissioner, and cites to a case where this Court found that a
 12 statement concerning a claimant’s likelihood of sustaining full-time employment is a medical
 13 opinion. Dkt. 12, p. 7 (citing *Caroline M.H. v. Comm'r of Soc. Sec.*, No. 2:21-CV-00212-TLF,
 14 2021 WL 5937167, at *5 (W.D. Wash. Dec. 16, 2021)). But unlike the statement in that case, Dr.
 15 Hirdes’s statement here was not an opinion about Plaintiff’s “likelihood” of being able to sustain
 16 employment. Rather, Dr. Hirdes made a conclusory statement that Plaintiff be limited to part-
 17 time work. *See* AR 319.

18 Furthermore, Dr. Hirdes himself wrote that the summary is meant to assist Plaintiff
 19 understand his assessments, diagnostic condensations, and treatment recommendations. AR 317.
 20 It does not include the work-related functional limitations that would render it a “medical
 21 opinion” as defined by the regulations, therefore the ALJ was not required to evaluate it as such
 22 and consider its supportability and consistency. Accordingly, the Court finds the ALJ did not err

1 in rejecting the statements provided Dr. Hirdes without evaluating its supportability and
2 consistency.

3 Even assuming that Dr. Hirdes's summary is a medical opinion, the ALJ's RFC
4 assessment is nonetheless consistent with Dr. Hirdes's notes. Dkt. 14, p. 3. The ALJ found, in
5 pertinent part, that Plaintiff's "work must be ... free of production rate pace." AR 26. Plaintiff
6 contends this portion of RFC is inconsistent with Dr. Hirdes's statement Plaintiff would benefit
7 from working "at a more slowed and deliberate pace" because "free of production rate pace"
8 may entail fast or normal pace. *See* Dkt. 12, p. 12; AR 319. But Plaintiff provides no authority to
9 show that this may be the case. Accordingly, the Court rejects this argument as well.

10 CONCLUSION

11 Based on the foregoing reasons, the Court hereby finds the ALJ properly concluded
12 Plaintiff was not disabled. Accordingly, Defendant's decision to deny benefits is affirmed and
13 this case is dismissed with prejudice.

14 Dated this 27th day of September, 2022.

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17 David W. Christel
18 United States Magistrate Judge
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